

Implementation of Rules Governing Tax Return Preparers

Notice 2011-6

Purpose

This notice provides guidance regarding the implementation of new Treasury regulations governing tax return preparers. Section 1 of this notice provides guidance regarding the requirement to obtain a preparer tax identification number (PTIN) under section 1.6109-2 and identifies the forms that qualify as tax returns or claims for refund for purposes of those regulations. Section 2 of this notice provides interim rules applicable to certain PTIN holders during the implementation phase of the new regulations governing tax return preparers.

Background

The IRS made findings and recommendations in Publication 4832, “*Return Preparer Review*,” which was published on January 4, 2010, concerning the results of an in-depth review of the tax return preparer industry. The IRS recommended increased oversight of tax return preparers through the issuance of regulations governing tax return preparers. The IRS published: (1) final regulations (75 FR 60309) addressing tax return preparer PTIN requirements on September 30, 2010; (2) final regulations (75 FR 60316) regarding the user fee to apply for or renew a PTIN on September 30, 2010; and (3) proposed regulations (REG-138637-07) addressing competency testing requirements, continuing education requirements, and extension of the ethics rules under 31 CFR Part 10 (reprinted in Treasury Department Circular 230 (Circular 230)) for tax return preparers on August 23, 2010.

Section 1. Guidance under section 1.6109-2

.01 PTINs Obtained After September 28, 2010

Section 1.6109-2 provides that beginning after December 31, 2010, all tax return preparers must have a PTIN that was applied for and received at the time and in the manner as prescribed by the IRS.

This notice confirms that tax return preparers who obtain a PTIN or a provisional PTIN and pay any applicable user fee after September 28, 2010, have applied for and received a PTIN in the manner prescribed by the IRS for purposes of the section 6109 regulations.

.02 Individuals Who May Obtain a PTIN

Section 1.6109-2(d) provides that for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or other number prescribed by the IRS. Additionally, after December 31, 2010, all individuals who are compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax must have a PTIN.

Section 1.6109-2(d) also provides that, except as provided in paragraph (h), beginning after December 31, 2010, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a PTIN. Section 1.6109-2(h) provides that the IRS may prescribe exceptions to the PTIN rules in appropriate guidance, including the requirement that an individual be an attorney, certified public accountant, enrolled agent, or registered tax return preparer before receiving a PTIN.

The IRS has decided to allow certain individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN and prepare, or assist in the preparation of, all or substantially all of a tax return in certain discrete circumstances.

a. Tax Return Preparers Supervised by Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Retirement Plan Agents, and Enrolled Actuaries

Until further guidance is issued, the IRS, in accordance with the authority to provide exceptions to the PTIN rules under section 1.6109-2(h), will permit any individual eighteen years or older to pay the applicable user fee and obtain a PTIN permitting the individual to prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund for compensation if:

(i) the individual is supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230 §10.3(a) through (e);

(ii) the supervising attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary signs the tax returns or claims for refund prepared by the individual;

(iii) the individual is employed at the law firm, certified public accounting firm, or other recognized firm of the tax return preparer who signs the tax return or claim for refund; and

(iv) the individual passes the requisite tax compliance check and suitability check (when available).

For purposes of this provision, a *law firm* is a law partnership, professional corporation, sole proprietorship, or any other association authorized to practice law in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia. A *certified public accounting firm* is a partnership, professional corporation, sole proprietorship, or any other association that is registered, permitted, or licensed to practice as a certified public accounting firm in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia. A *recognized firm* is a partnership, professional corporation, sole proprietorship, or any other association, other than a law firm or certified public accounting firm, that has one or more employees lawfully engaged in practice before the IRS and that is 80 percent or a greater percent owned by one or more attorneys, certified public accountants, enrolled agents, enrolled actuaries, or enrolled retirement plan agents authorized to practice before the IRS under sections 10.3(a) through (e) of Circular 230, respectively.

Individuals applying for a PTIN under this provision will be required to certify on the PTIN application that they are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund prepared by the individual and provide a supervising individual's PTIN or other number if prescribed by the IRS. If at any point the individual is no longer su-

pervised by the signing attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary, the individual must notify the IRS as prescribed in forms, instructions, or other appropriate guidance and will not be permitted to prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation under this provision.

Individuals who obtain a PTIN under this provision and prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation will not be subject to a competency examination or continuing education requirements. These individuals, however, may *not* sign any tax return they prepare or assist in preparing for compensation, represent taxpayers before the IRS in any capacity, or represent to the IRS, their clients, or the general public that they are a registered tax return preparer or a Circular 230 practitioner.

Although individuals who obtain a PTIN under this provision are not practitioners under Circular 230, they are, by preparing, or assisting in the preparation of, a tax return for compensation, acknowledging that they are subject to the duties and restrictions relating to practice in subpart B of Circular 230. The IRS may, by written notification, revoke a PTIN obtained under this provision if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct. The tax return preparer may, within 30 days after receipt of the notice of revocation of the PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

b. Individuals Who Prepare Tax Returns Not Covered by the Registered Tax Return Preparer Competency Examination(s)

The Treasury Department and the IRS have proposed rules that will require an individual to pass a registered tax return preparer minimum competency examination (competency examination). The IRS anticipates, however, that the tax returns and claims for refund covered by the competency examination(s) initially offered will

be limited to individual income tax returns (Form 1040 series tax returns and accompanying schedules). Although the IRS anticipates the types of returns and claims for refunds covered by the competency examination(s) may expand in the future, the IRS recognizes that certain compensated tax return preparers do not prepare Form 1040 series tax returns or related claims for refunds and that the tax returns and claims for refunds prepared by some of these individuals may not be covered by the competency examinations for a significant period of time. The IRS has determined that individuals should not be required, as a condition to obtaining a PTIN, to pass a competency examination covering tax returns and claims for refunds not prepared by the individual. Therefore, until further guidance, this notice, in accordance with the authority under section 1.6109-2(h), provides that any individual eighteen years or older may pay the applicable user fee and obtain a PTIN if:

(i) the individual certifies that the individual does not prepare, or assist in the preparation of, all or substantially all of any tax return or claim for refund covered by the competency examination(s) for registered tax return preparers administered under IRS oversight (1040 series until further notice); and

(ii) the individual passes the requisite tax compliance check and suitability check (when available).

Individuals who obtain a PTIN under this provision and prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation will not yet be subject to a competency examination. These individuals are not currently required to satisfy the same continuing education requirements that a registered tax return preparer must complete to renew their PTIN. In the future, the IRS may require through forms, instructions, or other appropriate guidance that these individuals complete continuing education to renew their PTIN.

Individuals who obtain or renew a PTIN under this provision may sign the tax returns or claims for refunds that they prepare for compensation as the paid preparer. These individuals may also represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the

Taxpayer Advocate Service) during an examination if the individual signed the tax return or claim for refund for the taxable year under examination. They may not, however, represent to the IRS, their clients, or the general public that they are a registered tax return preparer or a Circular 230 practitioner. Enrolled retirement plan agents and enrolled actuaries who obtain a PTIN under this provision may continue to practice and represent as provided in Circular 230.

Although individuals who obtain a PTIN under this provision are not practitioners under Circular 230, they are, by preparing, or assisting in the preparation of, a tax return for compensation, acknowledging that they are subject to the duties and restrictions relating to practice in subpart B of Circular 230. The IRS may, by written notification, revoke a PTIN obtained under this provision if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct. The tax return preparer may, within 30 days after receipt of the notice of revocation of the PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

.03 Forms Requiring a PTIN

Section 1.6109-2(h) provides that the IRS may specify in appropriate guidance the returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of the PTIN regulations. Consistent with that authority, the IRS hereby specifies that all tax returns, claims for refund, or other tax forms submitted to the IRS are considered tax returns or claims for refund for purposes of section 1.6109-2 unless otherwise provided by the IRS. For purposes of this provision, the term tax forms is interpreted broadly. An individual must obtain a PTIN to prepare for compensation all or substantially all of any form except those specifically identified by the IRS as not subject to the requirements of §1.6109-2. At this time, the IRS identifies the following forms as not subject to the requirements of §1.6109-2:

Form SS-4, *Application for Employer Identification Number*;

Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*;

Form SS-16, *Certificate of Election of Coverage under the FICA*;

Form W-2 series of returns;

Form W-7, *Application for IRS Individual Taxpayer Identification Number*;

Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*;

Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*;

Form 872, *Consent to Extend the Time to Assess Tax*;

Form 906, *Closing Agreement on Final Determination Covering Specific Matters*;

Form 1098 series;

Form 1099 series;

Form 2848, *Power of Attorney and Declaration of Representative*;

Form 3115, *Application for Change in Accounting Method*;

Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*;

Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*;

Form 4419, *Application for Filing Information Returns Electronically (FIRE)*;

Form 5300, *Application for Determination for Employee Benefit Plan*;

Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*;

Form 5310, *Application for Determination for Terminating Plan*;

Form 5500 series;

Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*;

Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*;

Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*;

Form 8508, *Request for Waiver From Filing Information Returns Electronically*;

Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*;

Form 8809, *Application for Extension of Time To File Information Return*;

Form 8821, *Tax Information Authorization*;

Form 8942, *Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program*

The IRS may in future guidance modify the list of documents that do not qualify as tax returns or claims for refund for purposes of section 1.6109-2(h).

Section 2. Interim Rules

.01 Provisional PTINs

As discussed in section 1 of this notice, an individual may be designated as a registered tax return preparer if the individual successfully completes a competency examination or otherwise meets requisite standards prescribed by the IRS. The IRS, however, does not expect to offer the competency examination before mid 2011. Therefore, to allow tax return preparers to obtain a PTIN and continue to prepare tax returns or claims for refund until the competency examination is available, the IRS, as an interim rule, will allow individuals who are not attorneys, certified public accountants, or enrolled agents to obtain a provisional PTIN before the date that the competency examination is first offered ("initial test offering date"). Individuals may obtain a provisional PTIN through the IRS' new online PTIN application system or by submitting to the IRS a paper Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*. The individual must annually renew the provisional PTIN and pay the applicable user fee.

The IRS generally will not issue provisional PTINs in accordance with this provision after the initial test offering date. After the initial test offering date, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers, or individuals defined in section 1.02(a) or (b) of this notice will be eligible to obtain a PTIN in accordance with section 1.6109-2, subject to any future IRS guidance identifying additional individuals who may obtain a PTIN.

Until December 31, 2013, a provisional PTIN may be renewed upon proper application and payment of the applicable user fee, even if the individual holding the provisional PTIN is not an attor-

ney, certified public accountant, enrolled agent, or registered tax return preparer. After December 31, 2013, provisional PTINs generally will not be renewed, and the holder of a provisional PTIN obtained in accordance with this provision may keep the PTIN only if the holder of the provisional PTIN is eligible to obtain a PTIN in accordance with section 1.6109-2, section 1.02(a) or (b) of this notice, or future guidance.

.02 Return Preparation by Provisional PTIN Holders

Tax return preparers who properly obtain a provisional PTIN before the initial test offering date will be permitted, subject to the requisite federal tax compliance check and suitability check (when available), to prepare for compensation all or substantially all of any tax return or claim for refund until December 31, 2013. During the transition period from the initial test offering date through December 31, 2013, tax return preparers who hold a provisional PTIN may, subject to the payment of the applicable user fee, take the competency examination as often as the examination is offered.

These interim rules apply to those tax return preparers who obtain a provisional PTIN prior to the initial test offering date. An individual who is subject to the competency testing requirement for becoming a registered tax return preparer who does not obtain a PTIN before the initial test offering date must pass the competency examination and be designated as a registered tax return preparer to be permitted to prepare for compensation all or substantially all of a tax return or claim for refund.

The holder of a provisional PTIN may represent that the holder is authorized to practice before the IRS by preparing and filing tax returns or claims for refund, but the holder of a provisional PTIN may not represent that the holder is a registered tax return preparer or has passed the competency examination necessary to become a registered tax return preparer.

.03 Practice Based on Return Preparation

The proposed Circular 230 regulations include registered tax return preparers in the definition of individuals described as

practitioners and authorize these individuals to practice before the IRS. Practice as a registered tax return preparer generally is limited to preparing tax returns, claims for refund, or other documents for submission to the IRS and to limited representation as described below. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

Registered tax return preparers may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during an examination if the registered tax return preparer prepared and signed (or prepared and was not required to sign) the tax return or claim for refund for the taxable period under examination.

Prior to January 1, 2011, any individual generally may prepare a tax return or claim for refund for compensation. An individual who prepares and signs a taxpayer's return or claim for refund as the preparer generally may represent that taxpayer during an examination of the taxable period covered by that return or claim for refund. The proposed Circular 230 regulations generally do not extend this right of representation to individuals who are not practitioners after December 31, 2010. To ensure that tax return preparers have sufficient time to become registered tax return preparers, these interim rules provide that an individual may represent a taxpayer during an examination provided the individual prepared and signed the taxpayer's return or claim for refund as the preparer for the taxable period under examination and the individual was permitted under the regulations or other published guidance to prepare the taxpayer's return or claim for refund for compensation. This right to represent the taxpayer does not, however, permit an individual who is not an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary to represent the taxpayer before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of Treasury.

.04 Continuing Education

The proposed Circular 230 regulations require registered tax return preparers to complete fifteen hours of continuing education each registration year. As an interim rule, there is no continuing education requirement for registered tax return preparers or tax return preparers who obtain a provisional PTIN during the first year of registration, which commenced on September 30, 2010.

.05 Ethics and Conduct

The proposed Circular 230 regulations include registered tax return preparers in the definition of individuals described as practitioners and authorize these individuals to practice before the IRS. Practice as a registered tax return preparer, therefore, will be subject to applicable duties and restrictions relating to practice before the IRS under Circular 230. Accordingly, as an interim rule, practice before the IRS by a tax return preparer who obtains a provisional PTIN or any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the IRS also is subject to applicable duties and restrictions relating to practice before the IRS under Circular 230. Tax return preparers holding a provisional PTIN and other individuals who for compensation prepare, or assist in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the IRS must not engage in disreputable conduct under section 10.51 of Circular 230. The IRS may, by written notification, revoke a provisional PTIN if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct under section 10.51 of Circular 230. The tax return preparer may, within 30 days after receipt of the notice of revocation of the provisional PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

The interim rules described in this notice and any final regulations apply to all tax return preparers who prepare all or substantially all of a tax return or claim for

refund for compensation. As discussed in section 1 of this notice, all tax returns, claims for refund, or other documents submitted to the IRS unless otherwise provided for in section 1 of this notice or other guidance are tax returns for purposes of the PTIN regulations.

Contact Information

The principal author of this notice is Matthew D. Lucey of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Matthew D. Lucey at (202) 622-4940 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part 1, §§ 6662, 6694, 1.6662-4, 1.6694-2.)

Rev. Proc. 2011-13

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2010-15, 2010-7 I.R.B. 404, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or a position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements).

This revenue procedure applies to any income tax return filed on 2010 tax forms for a taxable year beginning in 2010, and to any income tax return filed on 2010 tax forms in 2011 for short taxable years beginning in 2011.